

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Petition of the California Public Utilities	)	
Commission for Delegated Authority to	)	
Implement Specialized Transitional Overlays	)	
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**SPRINT NEXTEL CORPORATION COMMENTS**

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## Summary

Sprint Nextel Corporation seeks Commission reconsideration for the following reasons:

1. The Order would distort competition for voice services. The Commission previously rejected a proposal to require wireless customers to use telephone numbers in new area codes finding that it would result in unreasonable discrimination. Segregating VoIP customers into unique area codes will harm a VoIP service provider's ability to compete against wireline and wireless carriers for voice service customers.

2. The Order creates several practical problems that will make implementation difficult or impossible. No method exists for tracking how customers use their telephone numbers making the feasibility of segregating customers into the new specialized overlay problematic. Rating of calls and local number portability remain industry concerns, but mitigation of these issues will likely harm number conservation efforts.

3. The Order does not promote number optimization policies. The record demonstrates that the specialized overlays will decrease number utilization and waste the assignment of unused area codes.

4. The Order does not comply with the Administrative Procedures Act. The Order failed to address all eight factors the Commission determined as necessary for evaluating requests for specialized overlays. Sprint respectfully submits that consideration of these factors, particularly the application of a cost/benefits analysis, would yield a different decision. The Order also incorrectly determined that numbering resources are "non-geographically based" for VoIP providers and improperly exempted LECs from their statutory dialing parity obligations.

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**SPRINT NEXTEL CORPORATION COMMENTS**

Sprint Nextel Corporation (“Sprint Nextel”) submits these comments in support of the two reconsideration petitions filed in response to the *California Specialized Overlay Delegation Order*.<sup>1</sup> Sprint Nextel urges the full Commission to reconsider the *Order* and withdraw its delegation of authority permitting California to implement a specialized overlay that unfairly discriminates against Voice over Internet Protocol (“VoIP”) services. The *Order* would undermine intermodal competition, is inconsistent with federal law, and does not comply with prior Commission rulings regarding number optimization.

**I. IMPLEMENTATION OF THE ORDER WOULD DISTORT COMPETITION IN THE MARKET FOR VOICE SERVICES**

Consumers today have an increasing array of choices for their voice telecommunications needs. These services are generally provided over three different technology platforms: conven-

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<sup>1</sup> See Public Notice, *Petitions for Reconsideration of Action in Rulemaking Proceedings*, Report No. 2747 (Dec. 29, 2005), published in 71 Fed. Reg. 2042 (Jan. 12, 2006). See also *Petition for California Public Utilities Commission for Delegated Authority to Implement Specialized Transitional Overlays*, CC Docket No. 99-200, *Order*, DA 05-2439 (Sept. 9, 2005) (“*California Specialized Overlay Delegation Order*” or “*Order*”). Reconsideration petitions were filed by Pac-West Telecomm, Inc. (“Pac-West”), and the California Cable & Telecommunications Association (“CCTA”).

tional LEC circuit-switched networks, wireless mobile services, and more recently, VoIP via Digital Subscriber Line (“DSL”) or cable modem broadband connections. In order to promote competition between these services, all participants in the marketplace must be subject to the same rules and be eligible to receive the same benefits. As Chairman Martin has stated:

All providers of the same service should be treated in the same manner regardless of the technology that they employ. We should be striving for regulatory parity between services as well as between service providers.<sup>2</sup>

Unfortunately, the *Order* fails to meet this standard. Rather than allowing all providers of voice services to compete with the same resources, the *Order* segregates VoIP services into a unique area code. When wireless telecommunications began to flourish and impact numbering resources, local exchange carriers made a similar proposal to require wireless customers to use telephone numbers in new, unfamiliar area codes, reserving existing area codes for wireline customers. The Commission promptly rejected this proposal as “unreasonably discriminatory” because these “exclusion” and “segregation” proposals “would confer significant competitive advantages on the wireline companies”:

We believe that assignment of numbers based on whether the carrier provides wireless service is not consistent with these [competitively neutral] objectives and could hinder the growth and provision of new beneficial services to consumers. \* \* \* [W]e find the selective and asymmetric treatment of carriers in the administration of telephone number resources is also an unjust and unreasonable practice that violates Section 201(b) of the Act.<sup>3</sup>

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<sup>2</sup> Remarks by Chairman Kevin J. Martin to the NARUC Summer Meeting, at 3 (July 26, 2005). See also Remarks of FCC Chairman Kevin J. Martin, TELECOM 05 Conference, at 2 (Oct. 26, 2005) (“I believe that it is the Commission’s responsibility to help ensure technological and competitive neutrality in communications markets.”).

<sup>3</sup> *Ameritech 708 NPA Order*, 10 FCC Rcd 4596, 4608-09 ¶¶ 27, ¶ 29, 4611-12 ¶ 35 (1995). See also *Second Local Competition Order*, 11 FCC Rcd 19392, 19527 ¶ 305 (1996) (“[T]he Texas Commission’s plan would unreasonably discriminate against wireless carriers. . . . Service-specific and technology-specific overlays . . . hinder entry into the telecommunications marketplace by failing to make numbering resources available on an efficient, timely basis to telecommunications services providers.”).

Since that order, intermodal competition between LECs and CMRS providers has expanded dramatically, with enormous benefits to the American consumer. Consumers can also now port their telephone numbers between LEC and wireless services – a capability they would not have had if the Commission had adopted the LEC segregation proposals.

The *Order*, however, authorizes the very segregation the Commission previously rejected and threatens to push VoIP customers into unfamiliar area codes, reserving existing codes for LEC and wireless customers. FCC Rule 52.9(a)(2) provides that numbering practices “shall . . . [n]ot unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers.” The *Order* fails to comply with this rule by permitting the California Public Utilities Commission (“CPUC”) to discriminate against the newest entrant in the voice market and compelling VoIP providers and their customers to use telephone numbers in a new area code that is different than the area code used by other providers of voice services.<sup>4</sup>

In the Telecommunications Act of 1996, Congress directed that telephone number assignment and dialing practices be used to foster — not to distort — competition. Congress’ intent is manifested in Sections 251(b)(2) and (3) of the Act, which require LECs to provide number portability and dialing parity. Congressional intent is also apparent in Section 251(e), where Congress specified that numbers be made available “on an equitable basis.” Permitting only two of three industry sectors that provide voice services to access numbers in existing area codes, while forcing the third, newest entrant to take numbers from a new area code, is inconsistent with the statutory directive that numbers be made available “on an equitable basis.”

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<sup>4</sup> The CPUC may not implement a specialized overlay without prior notice to the FCC (and presumably industry and the public). See *California Specialized Overlay Delegation Order* at n.1 and ¶ 7.

## II. IMPLEMENTATION OF THE ORDER IS PROBLEMATIC

There are numerous implementation issues that will make compliance with the *Order* problematic. First, a specialized overlay (“SO”) is inconsistent with current carrier numbering practices and will require significant industry changes to implement. Carriers do not currently track how customers use their telephone numbers.<sup>5</sup> Without such knowledge, carriers have no way of determining which customers should be placed in which area code. To gain such knowledge, the CPUC and the industry will be required to invent a costly usage tracking system that would be only as effective as the inputs received from customers (who may switch numbers from one usage-type to another).

Second, rating calls properly may also prove difficult with a specialized, technology-specific overlay. Although the CPUC plan to match and duplicate rate centers may mitigate the rating issue, it will do so at the expense of number conservation. *See* Part III *infra*.

Third, implementation of a specialized overlay implicates number portability. For instance, a LEC wireline customer could not port his/her number to a VoIP provider while maintaining adherence to the technology-specific SO. In their petitions for reconsideration, the petitioners assume that the *Order* relieves LECs of their statutory obligation to provide number portability.<sup>6</sup> If petitioners are correct in their assumption, Sprint Nextel cannot agree because a regulatory agency lacks the authority to waive mandatory obligations imposed by statute and because consumer welfare would not be promoted by precluding a consumer from porting his/her number when such porting is technically feasible. Moreover, the *Order* fails to address the requirements necessary to grant such a waiver.

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<sup>5</sup> *See, e.g.*, CPUC Petition at 3 (Oct. 6, 2003)(“The industry has also informed the CPUC staff that they do not currently track the type of services to be included in the SOs.”).

<sup>6</sup> *See* CCTA Petition at 6; Pac-West Petition at 4.

Fourth, the *Order* does not explain which area code would be used for services that converge multiple platforms (*e.g.*, devices that can operate on both broadband and wireless platforms or when a wireline carrier upgrades or changes its technology platform from traditional circuit switched to VoIP).

For all of the above reasons, the *Order* will create significant administrative burdens and will undermine current industry numbering practices.

### **III. THE ORDER DOES NOT PROMOTE THE FCC'S NUMBER OPTIMIZATION POLICIES**

The *Order* stated that the California specialized overlay “would further[] our numbering resource optimization goals.”<sup>7</sup> This statement is not supported by the record evidence. Sprint Nextel observed that the CPUC proposal would actually require carriers to obtain “more numbers to serve the same number of customers – that is, undermine number efficiency”:

The Petition assumes that “all CLECs, all ILECs and 50% of the cellular carriers [would] need a thousands-block in each rate center in which they operate” in the new SOs. Assume a carrier has 150 customers in a rate center. Today, that carrier would require only one thousand-block to serve its customers. However, if even one of the carrier's customers uses its number for a service targeted for inclusion in the new SO, the same carrier would then require two thousand-blocks (one block in the existing NPA and one block in the new SO) to serve the same 150 customers – thereby reducing number efficiency from 15 percent to 7.5 percent. The CPUC SO proposal would thus appear to have the effect of decreasing rather than improving number efficiency.<sup>8</sup>

The CPUC did not challenge the accuracy of this factual demonstration in its reply comments. On the contrary, it conceded that other service providers (*e.g.*, OnStar) would also require telephone numbers in both the existing area codes and the new SOs (thereby decreasing, rather than

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<sup>7</sup> *California Specialized Overlay Delegation Order* at ¶ 6.

<sup>8</sup> Sprint Comments at 6 (Nov. 17, 2004)(emphasis in original)(supporting citations omitted).

increasing, number efficiency).<sup>9</sup> Indeed, the CPUC's own staff acknowledged that their Commission's proposal would directly undermine the FCC's optimization policies by "creat[ing] the potential for many numbers to be stranded."<sup>10</sup>

Other parties noted that the CPUC proposal would needlessly consume scarce, unassigned area codes.<sup>11</sup> The CPUC stated that California has 738 rate centers and that the rate centers of the SOs would match the rate centers of existing area codes.<sup>12</sup> The two SOs the *Order* approved would provide a total of 1,568 NXX codes – the equivalent of 21 thousand-blocks for each rate center.<sup>13</sup> But according to the CPUC, "all CLECs, all ILECs and 50% of the cellular carriers [would] need a thousands-block in each rate center" in the new SOs.<sup>14</sup> In other words, virtually all available thousand-blocks in the two new SOs could be consumed immediately by existing carriers – leaving no room for new entrants and no room for growth (thereby quickly requiring the assignment of yet additional scarce area codes for additional SOs). Once again, the CPUC in its reply made no attempt to contest the accuracy of these facts.

The purpose of the Commission's number optimization policies is to "prolong the life of the North American Numbering Plan."<sup>15</sup> This goal is achieved by improving the efficiency in which carriers use numbers assigned to them – thereby avoiding unnecessary area code relief and

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<sup>9</sup> See CPUC Reply Comments at 2-3 (Dec. 2, 2003).

<sup>10</sup> See Memorandum, *Specialized Overlay Proposal Prepared by the Telecommunications Division and Legal Division*, at 5 (Sept. 30, 2003), appended to Nextel Comments (Nov. 17, 2003).

<sup>11</sup> See CPUC Petition at 4 (Oct. 6, 2003). See also Verizon Wireless Opposition at 6.

<sup>12</sup> See CPUC Petition at 4 (Oct. 6, 2003).

<sup>13</sup> See Verizon Wireless Opposition at 6.

<sup>14</sup> CPUC Petition at 5.

<sup>15</sup> Sprint Comments at 6, quoting *Numbering Optimization NPRM*, 14 FCC Rcd 10322, 10324 ¶¶ 1 and 5, 10414 n.361, 10423 ¶ 241 (1999).

the assignment of scarce unused area codes. The *Order* conflicts with both components because it decreases number use efficiency and wastes the assignment of new area codes.

#### **IV. THE ORDER DOES NOT COMPLY WITH THE ADMINISTRATIVE PROCEDURES ACT**

The *Order* does not meet the requirements imposed by the Administrative Procedures Act (“APA”).

##### **A. THE CONCLUSION THAT VOIP IS A “NON-GEOGRAPHIC-BASED SERVICE” IS NOT SUPPORTED BY THE RECORD EVIDENCE**

The *Order* stated that VoIP is a “non-geographic based service.”<sup>16</sup> This statement is incompatible with the record evidence, Commission precedent, and the CPUC’s own actions.

The Commission has defined “non-geographic based services” as those services that do “not require numbers from a specific geographical area.”<sup>17</sup> The Commission has recognized that wireless services, despite their mobile nature, use geographically-based numbering resources:

[T]o enable the rating of incoming wireless calls as local, wireless carriers typically associate NXXs with wireline rate centers that cover either the business or residence of end-users.<sup>18</sup>

Under this standard, VoIP services are also geographically based – namely, VoIP customers choose their number to obtain a desired local calling area for persons who call them.<sup>19</sup>

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<sup>16</sup> See *id.* at ¶¶ 4 and 5 (“[T]he telephone numbers proposed to be assigned in the SOs include . . . Voice over Internet Protocol (VoIP) services. . . . [T]he record demonstrates that the proposed SOs will include non-geographic based services.”).

<sup>17</sup> *Third Numbering Optimization Order*, 17 FCC Rcd at 284 ¶ 69.

<sup>18</sup> *Numbering Optimization NPRM*, 14 FCC Rcd 10322, 10371 n.174 (1999). Despite clear precedent, the *Order* suggested in passing that wireless services are not geographically based. See *California Specialized Overlay Delegation Order* at ¶ 7 (“The California Commission proposes to include all ‘non-geographic based’ or ‘transparent’ numbers, *except for cellular services* . . . .”)(emphasis added).

<sup>19</sup> See, e.g., Sprint Comments at 4 (“Customers may understandably be reluctant to convert to VoIP services if such conversion means that neighbors and business associates must dial extra

The CPUC argues that VoIP services are non-geographically based. But the CPUC's arguments are incompatible with the CPUC's own actions:

- The CPUC has recognized that changing a consumer's incoming local calling area would have "negative consequences" and that as a result, customers should be forced to change their telephone number, at minimum, only if the incoming local calling area does not change.<sup>20</sup> This observation applies equally well to VoIP customers.
- The CPUC stated that its proposed SOs would have rate centers that would "match the rate centers for each of the underlying area codes."<sup>21</sup> This proposal would have been completely unnecessary if services such as VoIP were truly "non geographic" because true non-geographically based services could use numbers from a single rate center in a State.

Thus, there is no factual basis to the statement in the *Order* that VoIP is a "non-geographic based service." Sprint Nextel acknowledges the Commission's *Vonage* decision, which held that VoIP is an inherently interstate service due in part to the inability to determine the location of the end user.<sup>22</sup> While VoIP customers may be physically located in another state or country, VoIP customers, like wireless customers, often choose a "local" telephone number to ensure that inbound calls, from nearby friends, family and businesses are treated as local, toll-free calls. It would be consistent for the Commission to determine that VoIP service is "geographic based" for numbering purposes, while holding that the service is interstate in nature for jurisdictional purposes.

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digits or pay toll charges for what would otherwise be local seven-digit calls."); AT&T Comments at 16-20; CCTA Comments at 9-10; MCI Comments at 3; Vonage Comments at 5-10.

<sup>20</sup> See Sprint Comments at 3-4, citing CPUC, *Competition for Local Exchange Service, Rulemaking*, 95-04-043, Decision 03-04-056 (April 17, 2003).

<sup>21</sup> CPUC Petition at 4.

<sup>22</sup> *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211, FCC 04-267, (Nov. 9, 2004) ("Vonage").

**B. THE ORDER FAILS TO ADDRESS THE FACTORS THE COMMISSION ESTABLISHED FOR SPECIALIZED OVERLAYS**

In its *Third Numbering Optimization Order*, the Commission held it would entertain State requests to implement specialized overlays on “a case-by-case basis,” and it identified eight factors that should be considered in evaluating such a petition.<sup>23</sup> The *Order*, however, did not address many of these Commission-prescribed factors.

For example, the Commission ruled that States must demonstrate that the “benefits will outweigh the costs of implementing the SO.”<sup>24</sup> The CPUC made no attempt to make this showing in its petition, and the record evidence developed in response confirmed that the CPUC proposal would be both costly to implement and would undermine, rather than promote, number optimization. *See* Part III *supra*.

The CPUC acknowledged in its petition that industry would incur new costs in attempting to implement its proposed SOs – including “billing, provisioning and ordering data bases and systems in order to track these services.”<sup>25</sup> The CPUC did not advise the Commission of its staff’s conclusion that industry’s costs to implement the SOs “would be substantial” and involve “a massive information technology process,” would entail “a number of significant technical difficulties,” would constitute “a huge undertaking,” and would create “the potential for many numbers to be stranded.”<sup>26</sup> The CPUC made no attempt to quantify these new “huge” costs, much less weigh these new costs against the benefits (if any) of its proposed SOs.

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<sup>23</sup> *See Third Numbering Optimization Order*, 17 FCC Rcd 252, 282 ¶ 67, 285 ¶ 72, 288 ¶ 79 (2001).

<sup>24</sup> *Id.* at 288 ¶ 80.

<sup>25</sup> CPUC Petition at 3.

<sup>26</sup> *See Memorandum, Specialized Overlay Proposal Prepared by the Telecommunications Division and Legal Division*, at 3, 5 and 6 (Sept. 30, 2003), *appended to* Nextel Comments (Nov. 17, 2003).

The Commission further required States to demonstrate that their proposed SOs would “divert significant demand from the underlying area code to extend the life of that area code.”<sup>27</sup> Again, the CPUC petition did not address this factor. To the contrary, the CPUC acknowledged that its proposed SOs would largely be populated by incumbent carriers having to duplicate numbers they already possessed.<sup>28</sup>

Again, the *Order* did not consider all eight of the Commission-specified factors. Sprint Nextel respectfully submits that a Commission reexamination of the *Order* will yield a different decision.

### **C. THE ORDER IMPROPERLY EXEMPTS LECs FROM THEIR STATUTORY DIALING PARITY OBLIGATION**

The *Order* “grant[ed] the CPUC a one-year waiver of the ten-digit dialing requirement.”<sup>29</sup> Under this “waiver,” a LEC customer making a local call to another LEC customer or to a wireless customer would dial seven digits, while the same LEC customer making a local call to a VoIP customer would have to dial one plus 10 digits.

As Sprint Nextel has previously noted, Section 251(b)(3) of the Communications Act imposes a duty on all LECs to provide dialing parity to competing providers of telephone exchange service. Commission rules implementing this statute provide that a LEC must permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer’s or the called party’s telecommunications service provider:

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<sup>27</sup> See *Third Numbering Optimization Order*, 17 FCC Rcd at 288 ¶ 82.

<sup>28</sup> See CPUC Petition at 5 (“Assuming all CLECs, all ILECs and 50% of the cellular carriers need a thousands-block in each rate center in which they operate, the CPUC estimates that two overlays over the entire state of California would be necessary.”).

<sup>29</sup> *California Specialized Overlay Delegation Order* at ¶ 9.

[T]he CPUC seeks Commission permission to require LECs to contravene the explicit requirements of the Communications Act. The Commission possesses the authority to waive application of its rules in specified circumstances, but it does not possess the authority to waive statutory requirements, including Section 251(b)(3). In summary, the Commission cannot grant as a matter of law the CPUC's proposal to implement a discriminatory dialing plan.<sup>30</sup>

Likewise, the Bureau lacks the authority to waive these statutory requirements.

## V. CONCLUSION

For the foregoing reasons, Sprint Nextel respectfully requests that the Commission reconsider the *California Specialized Overlay Delegation Order*. Sprint Nextel urges the Commission to withdraw the delegation granted to the CPUC in order to prevent implementation of a specialized overlay that unfairly discriminates against VoIP providers and their customers.

Respectfully submitted,

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<sup>30</sup> Sprint Opposition at 11-12 (Nov. 25, 2002)(emphasis in original).